

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

NICHOLAS EVAN CHRZAN,

Defendant-Appellee.

UNPUBLISHED

January 27, 2005

No. 250137

Oakland Circuit Court

LC No. 03-189471-FH

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from the trial court's order suppressing defendant's inculpatory statements. We reverse the trial court's order, lift the stay previously imposed, and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant is charged with larceny in a building, MCL 750.360. Two plainclothes police officers came to defendant's home and asked to speak with him about the incident, but told him that he was not under arrest and would not be arrested that day regardless of any statements he might make. Defendant, who was nineteen years old, made inculpatory oral and written statements. The officers did not advise defendant of his *Miranda*¹ rights prior to obtaining his statements. Defendant maintained that he was groggy during the interview because he was taking pain medication, but the officers indicated that he did not appear to be in ill health. The trial court granted defendant's motion to suppress his statements, finding that under the totality of the circumstances, defendant reasonably felt he was not free to leave and was required to answer questions, and that the statement to defendant that he would not be arrested that day, while not a promise of leniency, was made to elicit his cooperation.

A statement made by an accused during a custodial interrogation is inadmissible unless the accused voluntarily, knowingly, and intelligently waived his Fifth Amendment rights. The prosecution may not use a custodial statement unless it demonstrates that prior to questioning, the accused was informed of his rights. *Miranda*, *supra* at 444. *Miranda* warnings are not

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

required unless the accused is subject to a custodial interrogation. A custodial interrogation is questioning initiated by law enforcement officers after the accused has been taken into custody or deprived of his freedom in a significant way. *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999). To determine whether the person was in custody at the time of interrogation, the court must look at the totality of the circumstances to ascertain whether the defendant reasonably believed that he was not free to leave. *Id.* The ultimate question of whether a person was in custody and thus entitled to *Miranda* warnings before interrogation is a mixed question of law and fact which must be answered independently by the reviewing court after a de novo review of the record. *People v Mendez*, 225 Mich App 381, 382; 571 NW2d 528 (1997). Absent clear error, we will defer to the trial court's historical findings of fact. *Id.*

We reverse the trial court's order granting defendant's motion to suppress his statements, lift the stay previously imposed on the proceedings below, and remand for further proceedings. The officers questioned defendant in his own home. Questioning that occurs in a suspect's home is generally viewed as noncustodial. *People v Mayes (After Remand)*, 202 Mich App 181, 196; 508 NW2d 161 (1993). The officers told defendant that he was not under arrest, and that regardless of what he might tell him, he would not be arrested that day. No evidence showed that the officers physically restrained defendant or told him that he was required to answer questions. Defendant's subjective belief that he was not free to leave and was required to answer questions is not dispositive. *People v Coomer*, 245 Mich App 206, 220; 627 NW2d 612 (2001). An objective assessment of the totality of the circumstances indicates that defendant was not under arrest or in custody at the time he made the oral and written statements. *Id.*; *Zahn, supra*. The officers were not required to give defendant *Miranda* warnings prior to questioning him. The trial court erred by granting defendant's motion to suppress his statements.

Reversed and remanded for further proceedings on the charge against defendant. We do not retain jurisdiction.

/s/ Joel P. Hoekstra

/s/ Mark J. Cavanagh